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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45 (Report to Congress)
Universal Service)

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), on behalf of itself and its affiliates, hereby submits these comments regarding the extent to which the Commission's interpretations in the following areas are consistent with the language of the Communications Act of 1934, as amended:

(1) The definitions in Section 3 of the Act and the impact of the interpretation of those definitions on the provision of universal service

SBC believes that the definitions of "information service," "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," and "telephone exchange service" contained in Section 3 of the Act should be applied consistently throughout the Act. It would be unwise to arbitrarily modify these definitions for universal service purposes without clearly articulating the legal and policy reasons supporting such departure from the words of the Act.

Congress should affirm what is clear in the Act. Congress did not intend for information service providers or inside wire providers to receive Federal universal service support for the provision of their services. The availability of information services, such as Internet access, to urban and rural areas should be determined by consumers and marketplace forces.

Once these fundamental principles have been clarified, it may be appropriate for Congress, the Commission and the industry to re-examine the marketplace changes that are

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occurring as a result of the speed at which technology continues to evolve. The service potential from broadband transmission capabilities, computing power and cable TV technology is blurring the distinctions between common carrier services, information services and cable services. The impact of these changes on the broad public policy objectives Congress intended to accomplish must be considered if their objectives are going to survive the marketplace. For example, if computing technology changes make telephone service over the Internet via cable TV facilities a widespread reality, and only traditional telecommunications services fund universal service then universal service will be at risk. These are the types of issues that call out for attention.

(2) The application of those definitions to mixed or hybrid services and the impact of such application on universal service

SBC incorporates herein paragraph 2 of its discussion regarding the last preceding question.

(3) Who is required to contribute to universal service under Section 254(d)?

Section 254(d) requires all telecommunications carriers that provide interstate telecommunications services to contribute to Federal universal service support mechanisms. In addition, Congress gave the Commission the authority to include any other provider of interstate telecommunications if it is in the public interest to do so. SBC maintains that the Commission has no authority to exempt any providers which otherwise meet the standard defined in Section 254(d) except those providers whose contributions would be de minimis.

A provider that offers a telecommunications service (offering telecommunications to the public for a fee) should be considered a telecommunications carrier under the Act's Section 3 definitions regardless of the technology or underlying services used to offer the

telecommunications service. Information service providers rely upon this principle when they bundle a transmission component (telecommunications service obtained from an underlying carrier) with other features to produce an information service. The entire package is considered an information service for definition purposes even though it relies upon an underlying telecommunications service. In this case the provider is offering the information service to the public for a fee and is not holding itself out as a provider of a telecommunications service. If on the other hand a provider offered interstate telecommunications services through the use of underlying information services then this provider could be considered a telecommunications carrier and should contribute to the Federal universal service mechanisms.

(4) Who is eligible under sections 254(e), 254(h)(1), 254(h)(2) to receive specific Federal universal service support for the provision of universal service?

The Act intended for universal service support to be available to telecommunications carriers that provide universal service at an affordable price in accordance with the requirements of Section 214(e). Section 254(h)(1)(B) also allows a telecommunications carrier that provides discounted universal service to qualifying schools and libraries to receive support even though the carrier may not be designated an eligible telecommunications carrier under Section 214(e).

The Commission disregarded the Act and Congressional intent by including Internet services, inside wire services, and hardware such as routers and servers, in the universal service definition for qualifying schools and libraries. Additionally, the Commission has misinterpreted the Act to permit the providers of these non-telecommunications services to be eligible to receive Federal universal service support. Neither a literal reading of the Act nor an implied one can reconcile the Commission's interpretation with the public policy Congress intended to

implement.

The language of Section 254(e) of the Act makes plain that only a "telecommunications carrier" is eligible to receive universal service support. Congress also limited its definition of universal service in Section 254(c)(1) of the Act to "telecommunications services." Section 254(c)(3) supplements the universal service definition for schools, libraries and health care providers by including any additional services the Commission may designate for the purposes of satisfying Section 254(h). These special services are, however, limited to telecommunications services, because Section 254(h)(1)(A) and (h)(1)(B) apply by their terms only to a "telecommunications carrier." Section 3 of the Act specifically defines a telecommunications carrier as a provider of telecommunications services.

Had Congress intended for Federal universal service support mechanisms to apply to providers of non-telecommunications services, such as information services or inside wire services, it had a number of alternatives to accomplish that intent. Congress could have included non-telecommunications services within the scope of its universal service definition by specifically including them in Section 254(c)(1) or (c)(3). Alternatively, Congress could have included information service providers and other service providers in Section 254(e) as providers eligible to receive support. Finally, Congress could have expanded the application of Section 254(h)(1) to specifically include non-telecommunication service providers. However, Congress did not act on these alternatives or any others to similar effect. Instead, Congress intended to limit the application of its universal service mechanisms to telecommunications services and telecommunications carriers.

The Commission has established rules that permit an eligible telecommunications carrier

to receive Federal universal service support even when it does not provide universal service at a stand alone, affordable price. While a stand alone, affordable price may not be a requirement of Section 214(e) to be designated an eligible telecommunications carrier, the Commission was not obligated to provide support for universal service that is not affordably priced or which is bundled with other services. In these cases the revenue derived from the market place is adequate compensation and does not merit the availability of additional revenues obtained from Federal universal service support mechanisms. The availability of universal service at affordable rates is a guiding principle found in Section 254(b)(1) and clearly one of the underlying public policies Congress intended to accomplish. As further evidence of this fact, Section 254(i) specifically requires the Commission and the States to ensure that universal service is provided at just, reasonable and affordable rates. It is completely consistent to provide universal service support to eligible telecommunications carriers providing universal service at a stand alone, affordable price.

(5) The percentage of universal service support provided by the Federal mechanisms and the revenue base from which such support is derived

Section 254(i) states that the Commission and States should ensure that universal service is available at affordable rates. The Commission elected to fund 25% of the difference between the forward-looking economic cost of universal service and a revenue benchmark. If the forward-looking economic cost reflected the actual cost of providing universal service and the revenue benchmark reflected the affordable price customers could expect to pay, then funding 25% of the difference would be the conceptually correct thing to do for non-rural telephone companies.

However, the Commission's current universal service plan does not reflect actual cost levels nor is the revenue benchmark tied to an affordability concept. The end result is a plan which is mechanically unsound for purposes of calculating the total amount of support required. Obviously, the burden is on the FCC to remedy these deficiencies by assuring that an appropriate cost model is adopted which provides the opportunity for LECs to recover their actual costs and to ensure that the statutory requirement regarding affordability is addressed. The funding base is appropriately interstate end user revenue as long as the funded amount is associated with interstate cost recovery.

The Commission should also re-address the 25% federal funding level for rural telephone companies. The Commission's existing interstate mechanisms often assist rural telephone companies with a much larger share of universal service cost recovery than would otherwise occur. Without this assistance, rural telephone companies would experience intrastate price increases which could ultimately harm universal service. It does not seem logical that the Commission would suddenly depart from a historical precedent that seems to be working,

especially when Congressional intent is clear. To the extent that the funded amount includes intrastate cost recovery, it may be appropriate to also re-consider the funding base.

Respectfully submitted,

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January 26, 1998

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing , "Comments of SBC Communications Inc." in Docket No. CC 96-45 has been filed this 26th day of January , 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Mary Ann Morris", is written over a horizontal line.

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